

REMARKS/ARGUMENTS

In response to the above identified Office Action, the Applicants amend claims 1, 12, 18 and 21. The Applicants cancel claim 7. Accordingly, claims 1-6 and 8-33 remain pending in the application.

I. Claims Rejected Under 35 U.S.C. § 103

Claims 1-33 stand rejected under 35 U.S.C. § 103 as being allegedly being unpatentable over U.S. Patent No. 6,937,992 issued to Benda, et al. (hereinafter “Benda”) in view of U.S. Patent Publication No. 2003/0014286 by Cappellini (hereinafter “Cappellini”).

To establish a *prima facie* case of obviousness the Examiner must show that the cited references teach or suggest each of the elements of the claim. In regard to claim 1, this claim as amended includes the elements of “detecting a skipping of a range of the constraint and adjusting the simulating of the loading of the shipment in response to the skipping.” The Applicants have reviewed Benda and Cappellini but have been unable to discern any part therein that teaches or suggests these elements of claim 1 as amended. Specifically, the Applicants have reviewed the sections of Cappellini cited by the Examiners as disclosing the elements of now cancelled claim 7, namely paragraph [0186]. However, there is no mention in this section of any constraint having a range or the detection of a skipping of such a range. The Examiner states in conjunction with the citation of paragraph [0186] that “the examiner notes a box weight is taken into account for stacking.” See page 3 of the Office Action. However, the Applicants fail to see how this is germane to the recited elements of claim 7 or claim 1 as amended. The box weight is not a constraint having a range and does not inherently teach or suggest that such a range would be monitored for skipping. Thus, the examiner has not established that Cappellini teaches or suggests each of the elements of claim 1 as amended. Further, the Examiner has not relied upon and the Applicants have been unable to discern any part of Benda that cures this defect of Cappellini. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 1 are requested.

Claims 2-6 and 8-11 depend from independent claim 1 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 1, these

claims are not obvious over Benda in view of Cappellini. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

In regard to claim 12, this claim, as amended, includes the elements of “a means for detecting a non-monotone constraint violation.” The Applicants have reviewed Benda and Cappellini but have been unable to discern any part therein that teaches or suggests such a means. Thus, the Applicants request that the Examiner reconsider and withdraw the obviousness rejection in light of the amendments to claim 12.

Claims 13-17 depend from independent claim 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 12, these claims are not obvious over Benda in view of Cappellini. Accordingly, reconsideration and withdrawal of the obviousness rejections of claims 13-17 are requested.

In regard to claim 18, this claim, as amended, includes elements of “comparing the effects of upsizing and downsizing the shipment of the set of products during the simulating.” The Applicants have reviewed Benda and Cappellini but have been unable to discern any part therein that teaches or suggests these elements of claim 18 as amended. Rather, it appears that any adjustment to the shipments are additive thereby increasing the size of the shipment to maximize the utilization of the mode of transportation. See Benda, col. 6, line 62 – col. 7, line 9 and Cappellini, paragraph [0087]. Thus, Benda in view of Cappellini does not teach or suggest each of the elements of claim 18. Accordingly, reconsideration and withdrawal of the obviousness rejection of this claim are requested.

Claim 19-28 depend from independent claim 18 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 18, these claims are not obvious over Benda in view of Cappellini. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims is requested.

In regard to claim 29, this claim is an apparatus comprising a set of components including “a loading module to simulate the loading of a shipment” and “a processing device to evaluate the complex logical statement in a shipping role module and to execute the loading module.” The Examiner has not set forth any specific rejection of the elements of claim 29, which differ significantly from the elements of claim 1. The Examiner has not identified the set of components and their inter-relationships in the cited reference that form the claimed apparatus. The Examiner has not identified any specific components from either Benda or Cappellini that

correspond to those recited in claim 29. Thus, the Examiner has failed to set forth a *prima facie* case of obviousness that meets the requirements set forth by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 US ___, 82 USPQ2d 1385 (2007). To establish a *prima facie* case the Examiner must set forth articulated reasoning as to how each of the elements are taught or suggested by the prior art. Thus, the Applicants request that the Examiner reconsider the rejection of claim 29 and if the rejection is maintained, then it is requested that the Examiner clarify those aspects of Benda and Cappellini that the Examiner is relying on for teaching each of the components of claim 29. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 29 are requested.

Claims 30-33 depend from independent claim 29 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to claim 29, these claims are not taught or suggested by Benda in view of Cappellini. The Examiner maintains rejection of these claims and the Applicants similarly request that the Examiner identify those components that correlate to the structures claimed in claims 30-33. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 30-33 are requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-33, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450, on 6-2, 2008.

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